Filed 8/2/10 P. v. Heeter CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. DANIELLE MARIE HEETER, Defendant and Appellant.	B213696 (Los Angeles County Super. Ct. No. MA037675)

APPEAL from a judgment (order of probation) of the Superior Court of Los Angeles County, Jared D. Moses, Judge. Affirmed with directions.

Joanna Rehm, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Susan Sullivan Pithey and Steven E. Mercer, Deputy Attorneys General, for Plaintiff and Respondent.

Danielle Marie Heeter wrote scathing fake e-mails that she sent to herself, making it appear as though the notes had been sent by her husband's ex-wife. Heeter's husband submitted the e-mails in a family law proceeding in an effort to portray his ex-wife as uncooperative and potentially unstable, and to thwart her effort to obtain a modification of the custody orders regarding the couple's child. Heeter was convicted of a felony under Penal Code section 134, for preparing false documentary evidence with the intention to produce it or allow it to be produced for a fraudulent purpose. Heeter maintains (1) the trial court erred by denying her motion for acquittal; (2) the jury was not fully instructed on the elements of preparing false evidence; and (3) the minute order must be corrected because it does not correctly reflect the terms of her probation. Heeter's third contention has merit. As to the others, we find no error and affirm.

PROCEDURAL BACKGROUND

Heeter was charged with, and convicted by a jury of, one felony count of preparing false documentary evidence in violation of Penal Code section 134.[1] The trial court suspended imposition of sentence and granted Heeter three years formal probation. As conditions of probation, Heeter was ordered to perform 60 days of California Department of Transportation (Caltrans) service, and to pay $2,320 in fines, fees and penalties ($500 of which was stayed).

FACTUAL BACKGROUND

Prosecution case

Heeter has been married to Chris Heeter since 2005; they have three children. Prior to his marriage to Heeter, Chris Heeter was married to Melissa Aubry.[2] The marriage between Chris and Aubry was dissolved in 2004, and the two have always shared joint custody of their son Ryan.

---

[1] Statutory references are to the Penal Code.

[2] To avoid potential confusion, because the parties share or have shared the same surname, we shall refer to defendant as Heeter, her husband as Chris, and to Melissa Aubry as Aubry.

During 2006, Chris and Aubry were engaged in a custody dispute. Aubry wanted additional time with Ryan, and sought a modification of the existing custody order. During a hearing in family law court in August 2006 on the matter, Chris submitted a declaration. Four e-mails were attached to his declaration which appeared to have been sent from Aubry to Heeter. Chris claimed the e-mails "clearly exhibit[ed Aubry's] uncooperative attitude and apparently unstable state of mind."

The first e-mail was dated May 30, 2006 and entitled "Get Over Yourself." It read: "You are nothing but a little girl. Leave my son out of your bullshit. [¶] . . . [¶] I read what you write about me, and you are so wrong it's not even funny. I've been there all of my son's life and will always be there for him. You have another thing coming if you think I'm going to let you be a part of his life. Like Deedee said, you're an ugly fucking cunt. Chris is—will see in the end when he dumps your ass and puts you to the curb. Like I said before, you will get what's coming to you. So from now on do us all a favor and just disappear. [¶] . . . Melissa"

The second note was sent on June 13, 2006 and entitled "Awww, Poor Thing." It read: "You know what's really sad is that you will never be Ryan's mother. I'm one in his life and you last on the list. You should move on and find some other child to manipulate. You're a sorry excuse for a parent. Chris was stupid for marrying a gold digger like you. Alls you care about is yourself. If you think that little piece of paper Chris' lawyer sent me is [going] to stop me from telling you what I think of you, you're wrong. You're not part of Ryan's life and you're not a part of my divorce to Chris. I seriously think you should find a new life because sooner or later it won't belong to you anymore. [¶] . . . Melissa"

The third missive, sent on June 15, 2006, stated: "My son is not yours and will never be yours[!] Look you fucking bitch, I'm sick and tired you claiming my son is your own. Get over it. He's mine and always will be. Your childish behavior is getting really annoying. Grow up and find someone else's child to claim. You can't have mine. Oh, and another thing, when I get custody of my son, I will make sure you are not

allowed around him. Like I told you before, it's—before, it's just better if you just disappear."

The final e-mail, entitled "Blah, Blah, Blah[!]" was sent July 3, 2006. It read: "You are not fucking God. I don't know who you thing you are, but I really think you should grow up and stop thinking you belong here. Oh, and a—as for Ryan's cell phone that his dad bought him, your name and number not be in there. Ryan has no reason to call your sorry ass excuse for a stepmother. When are you going to leave—when are you going to learn Ryan doesn't want you in his life. He tells me all the time that you come between him and his dad and that his dad spend all of his time with you and your ugly ass children. Do me a favor and stay away from Ryan or I will have to do it for him."

Aubry did not write the e-mails. She believed a fake MySpace account had been created in her name, and that Heeter wrote the e-mails to make Aubry look bad in the custody dispute. The family law judge, who doubted the authenticity of the e-mails, did not modify Ryan's custody arrangement.

Later, Aubry met with Detective Dina Lincoln of the Los Angeles County Sheriff's Department, to discuss her concerns regarding identity theft. Thereafter, Detective Lincoln served a search warrant on MySpace.com seeking account records for Heeter, Chris and Aubry. Detective Lincoln's review of the computer logs and internet protocol (IP) addresses obtained with the warrant revealed that each of the e-mails had originated from a MySpace account using an IP address identical to that of the MySpace account created in Aubry's name to which they were sent.[3]

Detective Lincoln and her partner met with Heeter and Chris at their home. The four of them went into the kitchen, where the detectives saw printouts of various MySpace e-mails laid out on the kitchen island. Chris told Detective Lincoln she could take the copies with her, and then left the room with Detective Lincoln's partner.

---

[3] Heeter concedes there is sufficient evidence to support the jury's finding that the e-mails were fake and that she wrote them. Thus, we need not discuss technical evidence introduced at trial linking Heeter's computer records to the e-mails.

Detective Lincoln and Heeter remained in the kitchen. Detective Lincoln mentioned the complaint that had been filed, and told Heeter she wanted to talk to her about four e-mails Detective Lincoln had brought with her. As Detective Lincoln began to read the July 3, 2006 e-mail out loud, Heeter became "highly agitated." She got "very upset" and began to cry and yell at Detective Lincoln. When Detective Lincoln asked Heeter "[w]ho would do such a thing?," Heeter at first denied having written the e-mail, but then said she wrote the e-mails to herself because she "didn't have anyone else to talk to." Detective Lincoln was confident that Heeter's comment referred to the e-mail message Detective Lincoln had read to her, not to MySpace pages Chris had given to Detective Lincoln earlier or to other comments about Aubry that Heeter had posted on her MySpace page.

At the close of the prosecution's case-in-chief, Heeter moved for acquittal. (§ 1118.1.) Her motion was denied.

Defense case

Heeter testified. She denied having created a MySpace account in Aubry's name, having authored the four e-mails or having had anything to do with them. Heeter told Chris about the hurtful e-mails when she received them, and printed them out when he instructed her to do so. She did not know why Chris wanted the e-mails. He did not tell her he planned to submit them to the court in connection with the custody dispute with Aubry, and she was never involved in that dispute.

Heeter and Chris share a single computer in their home. She stored her login information on her MySpace account using the "remember me" function, that stores both her e-mail and password for easy access. Heeter has never asked Chris if he sent her the offensive e-mails. The e-mails are hurtful, and she does not believe her husband would be that cruel. Nevertheless, she does suspect that he (or Aubry) may have sent them.

When Detective Lincoln interviewed Heeter at her home, Heeter gave her printed copies of the e-mails. Detective Lincoln explained that she was investigating the "pages that were turned over to the family court judge." Detective Lincoln started reading one of the notes, and asked Heeter if she wrote it. When Heeter said she had not, Detective

Lincoln accused her of lying. Heeter told Detective Lincoln she had "posted [her] own feelings and [her] venting on [her] own MySpace." Heeter printed copies of those postings for Detective Lincoln. They weren't nice messages; they were angry messages in which she basically asked Aubry to leave her alone. Heeter testified she never sent those notes to Aubry. Heeter "highly dislike[s]" Aubry, but does not know her personally. Aubry "key[ed]" Heeter's car shortly before Chris and Heeter got married.

Heeter was unable to explain why activity on her computer records showed a back-and-forth exchange of e-mails between herself and a friend between 11:15 a.m. and 11:56 a.m. on June 27, 2006, while a derogatory e-mail from the purported Aubry account to Heeter's account was sent at 11:51 a.m., and all the e-mail traffic originated from the same IP address. Heeter was also unable to explain why every time the purported Aubry account was accessed, her own MySpace account was concurrently logged on using an identical IP address.

Heeter's mother-in-law also testified to provide alibi and character evidence on Heeter's behalf. Heeter's mother-in-law knows Aubry, and does not believe her to be a truthful person. The mother-in-law has a good relationship with Heeter, but would not lie to protect her.

DISCUSSION

1. Motion for acquittal

Heeter maintains the trial court erred when it denied her motion for acquittal. She concedes there is enough evidence from which a jury could have found the e-mails were fake and that she wrote them. But, she claims there is insufficient evidence to show she intended to produce the e-mails or to allow them to be produced for a fraudulent or deceitful purpose in her husband's custody dispute with his ex-wife.

The standard of review on appeal from an order denying a motion for acquittal is the same as the test at trial. That is, whether, viewed in the light most favorable to the prosecution, the evidence is sufficient to support a conviction, i.e., """"whether from the evidence, including all reasonable inferences to be drawn therefrom, there is any substantial evidence of the existence of each element of the offense charged."""" (*People*

v. Cole (2004) 33 Cal.4th 1158, 1212–1213; see also *People v. Trevino* (1985) 1985) 39 Cal.3d 667, 695–696, disapproved on another point by *People v. Johnson* (1989) 47 Cal.3d 1194, 1221.) When, as here, the motion is made at the close of the prosecution's case-in-chief, the evidence is tested as it stood at that point. (*Trevino, supra,* 39 Cal.3d at p. 695.)

To demonstrate a violation of section 134, the prosecution must prove beyond a reasonable doubt that "(1) the defendant prepared a false or antedated book, paper, record, instrument in writing, or other matter or thing, (2) with the intent to produce it, or allow it to be produced as genuine or true upon any trial, proceeding, or inquiry authorized by law, (3) for any fraudulent or deceitful purpose." (§ 134; *People v. Bhasin* (2009) 176 Cal.App.4th 461, 469.)

Heeter concedes there is sufficient evidence to support the finding that she wrote the fake e-mails, and does not dispute that they were submitted to the family law court in connection with an ongoing custody battle between Chris and Aubry, as purported evidence of Aubry's "unstable state of mind." But Heeter insists the proof falls short with respect to the requirement that she prepared the fraudulent e-mails intending that they be produced, or to allow them to be produced, to defraud the family law court. She is wrong.

Heeter was clearly aware of the family law dispute between Chris and Aubry over custody of their son. Each of the offending e-mails refers to tension between Aubry and Heeter over the latter's relationship with Ryan. At least two of the e-mails specifically refer to the custody dispute over Ryan, including thinly veiled threats purportedly made by Aubry to be sure Heeter is kept away from Ryan once Aubry obtains custody. Another refers to a letter from Chris's family law attorney apparently warning Aubry to stop harassing or to stay away from Heeter. Both Aubry and the judge overseeing the

family law case testified they saw Heeter attend at least one hearing in that action.[4] Whether Heeter shared them with him, or he participated in their creation, or he obtained the e-mails from the Heeters's shared account, it is undisputed that Chris used the falsified e-mails in the family law action in an effort to rebuff his ex-wife's efforts to modify the shared custody arrangement, and as evidence that she was both an "uncooperative" and "apparently unstable" parent.

The trial court found, and we agree, there was circumstantial evidence from which the jury could reasonably infer Heeter created the e-mails intending that they would ultimately make their way into Chris's and Aubry's family law action to which they were directly germane. When first confronted by Detective Lincoln, to whom Chris provided a set of copies, Heeter denied having written the notes. That denial was immediately followed by anger, then a tearful admission that she had written them, but only to herself, and only as a way to "'vent.'" The trial court did not credit Heeter's claim that she wrote the e-mails to herself because she "didn't have anyone else to talk to." Heeter argues the court had no basis for dismissing that contention because there was no evidence in the record at that point of the nature or quality of her relationship with her husband, in-laws or anyone else, or her ability to "talk" with anyone. We disagree.

The e-mails are written in the "voice" of Aubry, an ex-wife engaged in a threatening diatribe against Heeter, focused almost myopically on an ex-wife's hysterical fear and rage that the "new wife/stepmother" nemesis is encroaching on Aubry's parental territory and trying to wrest her son away. It is simply not reasonable to conclude one would adopt the posture assumed in the writings if their purpose was, as Heeter claims, simply to allow their author to vent her frustrations "because [she] had no one to speak to." There is nothing about the e-mails that indicates they were meant to voice the

---

[4] Neither witness could recall when they saw Heeter in court. Aubry thought it was early in the action, which began in 2005. The judge knew only that it was after late June 2006, when he became involved in the case. It is undisputed that Heeter did not attend the hearing at which the e-mails were submitted.

frustrations of a person in a stepmother's position, or intended as a way to blow off steam at all. Rather, viewing the evidence in the light most favorable to the prosecution, it is far more reasonable to conclude that Heeter deceitfully created the e-mails and made sure her husband saw them, to expose his ex-wife's ostensible ruthless cruelty, so that the fraudulent evidence would find its way into the family law action and persuade the judge not to alter Ryan's custodial arrangement.

In sum, it requires no great logical leap for the jury to conclude that Heeter (alone or with her husband's assistance or encouragement) purposefully falsified writings that she caused or allowed to be used in the custody battle between her husband and his ex-wife, with the specific intent to deceive the family law court and to portray her stepson's mother in an extremely negative light. No evidence offered during the prosecution's case-in-chief suggests a more innocent motive or a reasonable explanation for Heeter's actions, nor does she advance one. The motion for acquittal was properly denied.

2. No instructional error or statutory ambiguity

There is no pattern jury instruction for a section 134 offense. The trial court drafted its own instruction for section 134, quoting the statutory language. Also, in accordance with *People v. Horowitz* (1945) 70 Cal.App.2d 675, which held that a violation of section 134 requires specific intent, the trial court added the word "specific" to the statutory language, proposing that it give the jury the following instruction: "Every person who prepares any false or ante-dated book, paper, record, instrument in writing, or other matter or thing, with the specific intent to produce it, or allow it to be produced for any fraudulent or deceitful purpose, as genuine or true, upon any trial, proceeding or inquiry whatever, authorized by law, is guilty of a violation of Penal Code section 134."

Heeter contends this instruction is ambiguous as to the conduct it reaches, because it permits the punishment of a person who merely prepares a fake document with the intent to use the document or to allow it to be used to deceive a court, even if she never submits the document to a court, or allows anyone else to do so. She also asserts the instruction, given over her objection, impermissibly delegated to the jury the judicial task of construing an ambiguous statute.

First, Heeter forfeited the opportunity to assert this argument. It is disingenuous, at best, for Heeter to claim the court gave this instruction "over defense objection" on the merits of that instruction. To the contrary, after explaining its reason for adding a single word to the statutory language, and its intention to use that language to instruct the jury as to the charged offense, the trial court inquired as to whether either party had "any objection to that?" The prosecutor had none. Heeter's attorney also informed the court he had "no objection to that modification, your honor."

What Heeter's counsel did request was that when the instruction was given, it be structured so the elements of section 134 were laid "out in sort of a list or one element by one element format," which he posited would be a "clearer way of presenting to the trier of fact the elements which must be proved beyond a reasonable doubt." The trial court noted the prosecutor had also proposed a format for the section 134 instruction just like the one Heeter proposed. The court declined to adopt the "elemental" format both sides preferred. Rather than assign "some numerical value of one through five on the elements," the court chose simply to "include the statute in . . . its entirety," adding "the word 'specific' regarding the intent," both because that was an "accurate representation of the statute," and "because it's simpler that way." The court stated it would maintain its chosen format "over the defense objection." With that, Heeter's attorney thanked the court, and the discussion moved on to other matters.

Thus, Heeter's claim that the trial court failed to instruct the jury as to all the elements of section 134 "over her objection" is completely groundless. Heeter failed to seek any substantive amplification or clarification of the instruction at trial, and has forfeited her ability to assert error on that ground on appeal. The trial court has a sua sponte duty to instruct the jury on all elements of law relevant to issues raised by the evidence. But it has no such duty to clarify an element of the law. (*People v. Cavitt* (2004) 33 Cal.4th 187, 203–204.) On the contrary, a defendant who believes that an instruction requires clarification must request it. (*Ibid.*; *People v. Rodrigues* (1994) 8 Cal.4th 1060, 1140.)

Moreover, even if Heeter had raised a substantive objection, none would have been required.

Heeter contends section 134 cannot withstand scrutiny because it "literally punishes a person for preparing a fake document in the privacy of their home . . . so long as it is prepared with fraudulent intent, even if the document thereafter never sees the light of day." She also contends the statute is ambiguous because the jury is left to determine what is meant by the statute's use of the term "allow." We conclude the statute is not ambiguous, and that Heeter is quite correct about the conduct the statute intends to punish.

A violation of section 134 is shown if the prosecution proves, by the requisite level of proof, that "(1) the defendant prepared a false . . . writing . . . , (2) with the intent to produce it, or allow it to be produced as genuine or true upon any trial, proceeding, or inquiry authorized by law, (3) for any fraudulent or deceitful purpose. (§ 134.)" (*People v. Bhasin*, *supra*, 176 Cal.App.4th at p. 469.) "'"If there is no ambiguity in the language of the statute, 'then the Legislature is presumed to have meant what it said, and the plain meaning of the language governs.' [Citation.] 'Where the statute is clear, courts will not "interpret away clear language in favor of an ambiguity that does not exist". [Citation.]'" [Citation.]' [Citation.] If the words of the statute are ambiguous, a court may resort to 'extrinsic sources, including the ostensible objects to be achieved and the legislative history.' (*Ibid.*) Applying these rules of statutory interpretation, a '"court must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences." [Citation.]'" (*Ibid.*)

As there is no evidence Heeter produced the e-mails in the family law case, the prosecution here proceeded on the theory that she "allowed" them to be produced in that action by her husband. Heeter maintains the word "allow" in section 134—and hence in the trial court's special instruction—is ambiguous and required further definition. We disagree. The court has a sua sponte duty to define terms that have a technical meaning peculiar to the law; it has no corresponding duty to define terms commonly understood

by those familiar with the English language. (*People v. Bland* (2002) 28 Cal.4th 313, 334; *People v. Estrada* (1995) 11 Cal.4th 568, 574–575.) "Allow" is a straightforward term within the common parlance, and well within a reasonable juror's ken. "'While their exact significance varies somewhat with the context of their use, . . . as definitive of a person's criminal conduct the words "allow" [citation], "permit" [citation], and "suffer" [citation], all imply knowledge of, coupled with a duty and power to prevent, the particular act or omission, the allowance, permittance or sufferance of which, constitutes the offense.'" (*Brodsky v. Cal. State Bd. of Pharmacy* (1959) 173 Cal.App.2d 680, 686.) No special definition was required.

In any event, even if further amplification had been in order, Heeter failed to seek clarification of the jury instruction on this point at trial, and has forfeited her ability to assert this error on appeal. Again, the trial court has no sua sponte duty to clarify an element of the law. (*People v. Cavitt*, *supra*, 33 Cal.4th at pp. 203–204.) A defendant who believes an instruction requires clarification must request it. *(People v. Rodrigues*, *supra*, 8 Cal.4th at p. 1140.) Heeter neither objected to the instruction nor sought clarification as to the meaning of "allow." (*Ibid*.) Her contention of error fails.

As for Heeter's assertion that she is subject to punishment simply because she prepared fake documents with fraudulent intent, even if the documents never see the light of day, she is quite correct. "'The objective of section 134, and the other sections embodied in title 7 [OF CRIMES AGAINST PUBLIC JUSTICE], chapter 6, entitled 'FALSIFYING EVIDENCE, AND BRIBING, INFLUENCING, INTIMIDATING OR THREATING WITNESSES,' 'is to prevent the fraudulent introduction of material in a proceeding under the authority of law.'" (*People v. Bhasin*, *supra*, 176 Cal.App.4th at p. 470.) Under section 134, it is the mere production of a false document with fraudulent intent which is the punishable offense. An independent but complementary statute—section 132—"applies to the actual *offer in evidence* of a false or fraudulently altered or antedated document. Each section deals with a discrete act and in a proper case a defendant may be charged with and convicted of both." (*People v. Pereira* (1989) 207 Cal.App.3d 1057, 1068; see also *Bhasin*, *supra*, 176 Cal.App.4th at p. 470; and *People v.*

Todd (1953) 120 Cal.App.2d 640, 644.) Heeter was not charged with an independent felony for violation of section 132, as there is no evidence that *she* "offer[ed] in evidence" the fraudulent e-mails in the family law action. That does not, however, negate the fact that the record contains substantial evidence to support her conviction for preparation of the fraudulent materials specifically intending that they be introduced (or to allow her husband to introduce them) in that proceeding in violation of section 134.

3. Probation conditions

At sentencing, the trial court rejected the prosecutor's request that Heeter be sentenced to 120 days in county jail, and instead granted Heeter's request, and placed her on probation for three years, subject to specific terms and conditions.

The minute order, however, recites two items not among the terms and conditions of probation verbally announced by the court and specifically accepted by Heeter at the sentencing hearing. They are that Heeter (1) "pay a restitution fine in the amount of $100 to the court," and that she (2) "not possess or use any credit cards." Heeter maintains the trial court did not impose these terms, which appeared to have been introduced into the minute order by virtue of clerical error. The general rule is that in cases in which there is a discrepancy between the court's oral pronouncement and the clerk's minute order, the oral pronouncement controls. (*People v. Farell* (2002) 28 Cal.4th 381, 384, fn. 2; *People v. Mitchell* (2001) 26 Cal.4th 181, 183, 185–188.) Heeter argues the minute order must be modified to eliminate the extraneous conditions to correctly reflect the court's pronouncement.

The attorney general insists no modification is required. He argues that when a court grants probation after a conviction and suspends sentencing, no judgment of conviction is rendered. Thus, a "grant of probation is not part of the judgment that creates vested rights; the court has the authority to revoke, modify or change its order." (*People v. Thrash* (1978) 80 Cal.App.3d 898, 901.) "The conditions of probation need not be spelled out . . . as long as the . . . defendant knows what they are . . . and the probationer has a probation officer who can explain [to her] the contents of the order." (*In re Frankie J.* (1988) 198 Cal.App.3d 1149, 1155.) The Attorney General notes this is

particularly common in sentencing proceedings because, as was the case in *Thrash*, the conditions of probation are frequently and routinely embodied in preprinted forms. (*Thrash, supra,* 80 Cal.App.3d at p. 900.)

This case is not like *Thrash*. In *Thrash*, the trial court explicitly conditioned the defendant's probation "'on other conditions set forth in the probation report.'" (*People v. Thrash, supra,* 80 Cal.App.3d at p. 900.) That did not occur here. Nor did Heeter's case involve a preprinted probation form, as in *Thrash.* Thus, the additional restitution fine and the prohibition against possession of credit cards were never mentioned anywhere, except in the minute order prepared by the clerk, presumably after the terms and conditions of probation were announced at the sentencing hearing. The Attorney General's argument that Heeter should be deemed to know about the newly imposed probationary conditions because she expressly acknowledged she "underst[ood] and accept[ed] all the probation conditions" at the hearing is specious. We fail to see how Heeter can be held to "understand and accept" terms that were never stated or explained to her in court, recommended in a probation officer's report or presented to her before they appeared in the postsentencing hearing minute order, which Heeter may never have seen before her notice of appeal was filed (on the same day the minute order was issued).

We shall direct the trial court to correct the minutes to eliminate the imposition of "a restitution fine in the amount of $100 to the court," and the prohibition that Heeter "not possess or use any credit cards."[5]

---

[5] The record does not contain a probation order. In the event such an order has issued, or is issued on remand, it shall be modified in accordance with the corrections to be made to the minutes.

DISPOSITION

The judgment (order of probation) is affirmed. The trial court is directed to correct the minutes and probation order, if any, to eliminate the imposition of a restitution fine in the amount of $100 to the court, and the prohibition that Heeter not possess or use any credit cards.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, Acting P. J.

CHANEY, J.